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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,250	10/30/2003	Philip W. Wyers	1990	2544
24264	7590	01/12/2005	EXAMINER	
TIMOTHY J MARTIN, PC 9250 W 5TH AVENUE SUITE 200 LAKEWOOD, CO 80226			ARK, DARREN W	
		ART UNIT		PAPER NUMBER
				3643

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10/699,250	Applicant(s)	WYERS, PHILIP W.
Examiner	Darren W. Ark	Art Unit	3643 \

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 08 November 2004.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-28 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-28 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. 10/069,322.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 6-9, 11-14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Winnicki 4,733,495.

Winnicki discloses a compression chamber (inside 18 including 38, 64); an elongated housing (44) extending from the compression chamber a selected distance (extends from 10 a certain distance depending upon whether the user has selected the compression chamber to be either in the uncompressed or compressed position); a partition (70); a moveable closure (86); a purge valve (26) associated with the housing and movable disposed over an opening formed through the housing (24 formed through rear wall of 18); a triggering assembly (98).

Winnicki discloses providing a housing (10) with a sidewall (walls of 10 including back wall 20) that surrounds a housing interior and which is partitioned (via inner structures including 22 or 70) into an upstream region (18) and a downstream region (84), a moveable closure (86); a purge valve (26) disposed over a purge opening (24), a compression chamber (18); evacuating air through the sidewall at the downstream region (see col. 4, lines 42-49) to establish a vacuum source; placing the moveable

Art Unit: 3643

closure proximate to an insect (see Fig. 1, 80 is placed near an insect before attempted capture); and creating air pressure less than ambient pressure to cause the moveable closure to move into an open position (see col. 5, lines 25-30).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winnicki 4,733,495.

Winnicki discloses a bayonet slot (40) and pin (42) connection between the housing (44) and the compression chamber (piston 30), but does not disclose a clamp. It would have been an obvious matter of design choice to employ a clamp between the housing and the compression chamber since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design, and it appears that the device of Winnicki would perform equally as well with a clamp, and because a clamp would be equally adept at securing two structures having circular cross sections.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winnicki 4,733,495 in view of Fahringer 4,817,330.

Art Unit: 3643

Alternatively, Winnicki does not disclose the compression chamber comprising a flexible bellows. Fahringer discloses a compression chamber comprising a flexible bellows. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to substitute the compression chamber of Winnicki for the flexible bellows of Fahringer in order to provide a compression chamber which is cheaper to manufacture with its less expensive materials such as rubber.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winnicki 4,733,495 in view of Kleinhenz 5,915,950.

Winnicki discloses a plurality of doors/fingers (at least a pair) resiliently biased into the first position (86 of Winnicki), but does not disclose the doors/fingers which are spring biased. Kleinhenz discloses a door (18, see Fig. 4) which is spring biased (see col. 4, lines 1-14 esp. lines 13, 14). It would have been obvious to a person of ordinary skill in the art to modify the doors of Winnicki such that they are spring biased in view of Kleinhenz in order to provide mechanical biasing means which will assuredly bias the doors into the first position and utilize a biasing mechanism that is less prone to wear versus the resilient material of the fingers of Winnicki.

7. Claims 1-9, 11, 14-18, 20, 21, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Pat. No. 3225330 to Zoz in view of Winnicki 4,733,495.

In regard to claims 1 and 16, Zoz discloses a compression chamber (7, 18); a housing (3, 6) which is selectively extensible (housing sections can be moved relative to each other at 4), includes a plurality of housing sections (3, 6), a primary housing section (6) releasably attached to the compression chamber (at 25, 26) and is formed

Art Unit: 3643

by a pair of primary housing pieces (5, 22); a partition (14); a triggering assembly (8, 9, 34-36) coupled to the compression chamber (via 18-21 and also by interconnection of the parts of the device), including a plunger shaft (19 or 31), a trigger switch (9), a trigger guard (35, 36); and an obstruction (12) disposed on a free end portion of the housing (between 1, 2), but does not disclose the movable closure being biased into the first position and wherein the movable closure is urged into the second position upon actuation of the compression chamber. Winnicki discloses the movable closure (86) being biased into the first position and wherein the movable closure is urged into the second position upon actuation of the compression chamber. It would have been obvious to a person of ordinary skill in the art to substitute the movable closures of Winnicki for the obstruction of Zoz in order to provide means which will assuredly seal off the housing and prevent any insects from escaping from the free end thereof.

In regard to claim 5, Zoz discloses an interference connection (25, 26) between the housing (6) and the compression chamber (7) and Winnicki discloses a bayonet connection. It would have been an obvious matter of design choice to employ a clamp between the housing and the compression chamber since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design, and it appears that the device of Zoz and Winnicki would perform equally as well with a clamp, and because a clamp would be equally adept at securing two structures having circular cross sections.

Art Unit: 3643

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over German Pat. No. 3225330 to Zoz in view of Winnicki 4,733,495 as applied to claim 9 above, and further in view of Fahringer 4,817,330.

Alternatively, Zoz and Winnicki do not disclose the compression chamber comprising a flexible bellows. Fahringer discloses a compression chamber comprising a flexible bellows. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to substitute the compression chamber of Zoz for the flexible bellows of Fahringer in order to provide a compression chamber which is cheaper to manufacture with its less expensive materials such as rubber.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over German Pat. No. 3225330 to Zoz in view of Winnicki 4,733,495 as applied to claim 9 above, and further in view of Kleinhenz 5,915,950.

Zoz and Winnicki disclose a plurality of doors/fingers (at least a pair) resiliently biased into the first position (86 of Winnicki), but do not disclose the doors/fingers which are spring biased. Kleinhenz discloses a door (18, see Fig. 4) which is spring biased (see col. 4, lines 1-14 esp. lines 13, 14). It would have been obvious to a person of ordinary skill in the art to modify the doors of Zoz and Winnicki such that they are spring biased in view of Kleinhenz in order to provide mechanical biasing means which will assuredly bias the doors into the first position and utilize a biasing mechanism that is less prone to wear versus the resilient material of the fingers of Winnicki.

Art Unit: 3643

10. Claims 12, 13, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Pat. No. 3225330 to Zoz in view of Winnicki 4,733,495 as applied to claims 11, 16 above, and further in view of Schuman 3,965,608.

Zoz and Winnicki disclose a purge valve (26 of Winnicki) associated with the compression chamber and which is moveably disposed over an opening (24) formed in the compression chamber, but do not disclose a purge valve associated with the housing and where the purge valve is disposed over an opening formed through the housing. Schuman discloses a purge valve (32) disposed over an opening (generally 35) in the housing (10). It would have been obvious to a person of ordinary skill in the art to modify the device of Zoz and Winnicki such that the purge valve is disposed over an opening in the housing in view of Schuman in order to direct exhausted air in a transverse direction away from either the user or any insects to which the device may be directed so as to reduce both user annoyance and scaring of the intended target insects.

11. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over German Pat. No. 3225330 to Zoz in view of Winnicki 4,733,495 as applied to claim 17 above, and further in view of Stine et al. 1,797,557.

Zoz and Winnicki disclose the plunger shaft connected to the butt end of the compression chamber (19 or 31 is connected to the back end of 7 [19 coupled by interconnection of parts]) and the trigger switch (9) resiliently biased into engagement with the shaft (via tension/friction generated by 22), but do not disclose the plunger shaft with a notch in the plunger shaft. Stine et al. discloses a plunger shaft (31) with a notch

Art Unit: 3643

(42) between proximal and distal ends and where the trigger switch is resiliently biased into engagement with the notch. It would have been obvious to a person of ordinary skill in the art to modify the plunger shaft of Zoz and Winnicki such that it has a notch between its ends in view of Stine et al. in order to provide means for positively engaging the trigger switch to the plunger shaft and thus only allow the device to be activated when a user depresses the trigger such that the notch in the plunger shaft is overcome versus the binding arrangement in Zoz.

12. Claims 24, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Pat. No. 3225330 to Zoz in view of Schuman 3,965,608 and Winnicki 4,733,495.

Zoz discloses a tubular housing (6); a collection member with a collection tube (3) and releasably disposed on an upstream end portion of the housing (at 4); a partition in the collection tube (14); a closure on an upstream end of the collection tube (between 1 & 2); a compression chamber (7, 18), but does not disclose the housing having a purge port. Schuman discloses the housing with a purge port (32, 35). It would have been obvious to a person of ordinary skill in the art to employ the purge port of Schuman in the housing of Zoz in order to direct exhausted air in a transverse direction away from any insects to which the device may be directed so as not to scare the intended target insects located near the distal end of the device.

Zoz discloses an obstruction (12), but does not disclose the closure moveable between open and closed orientations. Winnicki discloses the closure (86) being moveable between open and closed orientations. It would have been obvious to a

Art Unit: 3643

person of ordinary skill in the art to substitute the movable closures of Winnicki for the obstruction of Zoz in order to provide means which will assuredly seal off the housing and prevent any insects from escaping from the free end thereof.

In regard to claim 28, Zoz, Schuman, and Winnicki disclose the closure including an annular ring (67 of Winnicki) adapted to fit over the collection tube (68 of Winnicki) and a plurality of closure flaps (86 of Winnicki).

13. Claim 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Pat. No. 3225330 to Zoz in view of Schuman 3,965,608 and Winnicki 4,733,495 as applied to claim 24 above, and further in view of Mah 6,202,343.

Zoz, Schuman, and Winnicki do not disclose the collection being transparent. Mah discloses a collection tube (29) which is transparent (31). It would have been obvious to modify the collection tube of Zoz, Schuman, and Winnicki such that it is transparent in view of Mah in order to allow the user to view the contents of the collection tube to see what has been caught so that it may be determined when the collection tube needs to be emptied.

In regard to claim 26, Zoz, Schuman, and Winnicki disclose the screen mesh seated within the collection tube (see Zoz), but do not disclose the collection tube having a circumferential groove formed therein wherein the mesh is seated against the groove. Mah discloses a tube (29) with a groove (61, 63) in which the screen mesh (51) is seated. It would have been obvious to modify the collection tube of Zoz, Schuman, and Winnicki such that it has a groove therein for seating the screen mesh in view of

Art Unit: 3643

Mah in order to securely maintain the position of the screen mesh inside the collection tube so that it does not shift during use.

14. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over German Pat. No. 3225330 to Zoz in view of Schuman 3,965,608 and Winnicki 4,733,495 as applied to claim 24 above, and further in view of Septer 6,226,919.

Zoz, Schuman, and Winnicki disclose the screen mesh seated within the collection tube (see Zoz), but do not disclose the collection tube having a circumferential groove formed therein wherein the mesh is seated against the groove. Septer discloses a tube (2 or 2a) with a groove (2e) in which the screen mesh (21, 21a) is seated. It would have been obvious to modify the collection tube of Zoz, Schuman, and Winnicki such that it has a groove therein for seating the screen mesh in view of Septer in order to securely maintain the position of the screen mesh inside the collection tube so that it does not shift during use.

15. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over German Pat. No. 3225330 to Zoz, Schuman 3,965,608, Winnicki 4,733,495, and Mah 6,202,343 or Septer 6,226,919 as applied to claim 26 above, and further in view of Jolly 1,308,497.

Zoz, Schuman, Winnicki and Mah or Septer do not disclose the screen mesh which tapers in the upstream direction. Jolly discloses a screen mesh (8) which tapers in the upstream direction. It would have been obvious to a person of ordinary skill in the art to modify the screen of Zoz, Schuman, Winnicki, and Mah or Septer such that it tapers in the upstream direction in view of Septer in order to direct any captured insects

toward the sides and away from the main airway down the center to thereby maintain maximum capable airflow.

### ***Response to Arguments***

16. Applicant's arguments filed 11/8/2004 have been fully considered but they are not persuasive.

In regard to applicant's argument that "Winnicki, Applicant wholly disagrees that 'inside 18 including 38, 64' is the same as Applicant's compression chamber...are the backside and the coil spring respectively... 'compression chamber'... connotes an enclosed structure which itself can be compressed...", the examiner contends that the term "compression chamber", although it is agreed that it represents an enclosed structure, cannot be additionally interpreted to include the a structure which can itself be compressed. The language which structurally and functionally describes the "compression chamber" merely sets forth that the chamber can provide some sort of compression or pressure and that at least some part of it can be moved between compressed and uncompressed positions. There are no particular limitations which define the manner in which the chamber is being compressed, which in the case of the desired invention is by the action of the bellows-like compression chamber. The chamber of Winnicki also compresses in an axial fashion similar to the desired invention.

In regard to applicant's argument that "Winnicki...movable closure is retained in the first position...is not fully and fairly taught...describes fingers 86 as

'deflectable'... nowhere mentions that fingers 86 are immovable during this sequence..." and that "Zoz... absent such a teaching, it is improper for the Examiner to reject this feature based on a combination with Winnicki..., the examiner contends that the fingers 86 of Winnicki are indeed movable when capturing insects as shown by the phantom lines in Fig. 5 when a combination of rushing air (Winnicki discusses the vacuum conducted past fingers 86 at col. 5, lines 25-30) with insect passes past it and that in the first position these fingers do in fact hinder access to the upstream region by way of extending into the path of the air stream for capturing insects. Also the fingers of Winnicki would not be caused to move when the coil spring is compressed since the air would be forced rearwardly to pass through hole 24 and valve member 26, therefore the fingers are immovable during this time. Furthermore, it would not be beneficial to have the fingers move during compression since this would open up the end of the device and thereby allow the trapped insects to escape.

In regard to applicant's argument concerning claim 5 and the obviousness rejection, the examiner bases the rejection on the principle that Winnicki joins two circular cross section structures with a slot and pin and that the use of clamps is an equivalent means to join two such structures and would have been within the ordinary skill of a person in the art. Furthermore, the clamp is not being particularly claimed with any specific structure.

In regard to applicant's argument that "Zoz... element 6 in Zoz is part of the compression chamber...", the examiner contends that the tubular housing portion 5 of part 6 does not compress or move and that instead the compressing portions of the

Art Unit: 3643

compression chamber is represented by the part 7 along with part 18. Part 7 of Zoz slides over part 6 during compression and setting of the device. The compression chamber of Zoz meets the limitations as claimed by applicant since the chamber can have at least a portion extending inside the housing represented by part 6 so long as a part of the housing 3 extends from the compression chamber. The compression chamber and housing have not been particularly claimed in such a manner which overcomes Zoz in view of Winnicki.

In regard to applicant's argument that "Applicant respectfully disagrees with the Examiner's premise...no evidentiary basis for the proposition that utilization of a biasing mechanism would render the device less prone to wear verses the resilient material...", the examiner contends that there is a chance that in some cases the resilient material of Winnicki may at some future point lose its elastic or resilient ability that would make it less suitable in preventing insects from escaping. Furthermore, the use of Kleinhenz's door with spring bias mechanism would assuredly close of the air stream to prevent the insects from escaping since it provides a more substantial and solid barrier to exit.

In response to applicant's argument that "Kleinhenz...would be no reasonable expectation of success to incorporate mechanically spring biased trap doors into the manually operated devices of Zoz and Winnicki...", the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined

teachings of the references would have suggested to those of ordinary skill in the art.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

### **Conclusion**

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rector 1,807,550 discloses a baffle plate or door (23) hingedly mounted at (24) and which is biased into the first or closed position by spring (25); Septer '919 discloses telescoping housing sections (2a, 2d); Studler '384 discloses a door (26) biased by a coil spring (28a); Lockwood '063 discloses a plurality of tubular sections (2; also see Fig. 2) that allow the device to be selectively extensible; Keiser '770 discloses a compression chamber (5) with a purge valve (4) over an opening (17).

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3643

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA